

In the Matter of)	
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T-MOBILE USA, INC.)	File No. EB-04-TC-010
)	
Compliance with the Commission's)	NAL/Acct. No. 200532170012
Rules and Regulations Governing)	FRN: 0004121760
the National Do-Not-Call Registry)	
)	
)	

Released: November 23, 2005

5. T-Mobile shall make its voluntary contribution to the United States Treasury by mailing payment by check or money order to Forfeiture Collection Section, Finance Branch, Federal

³ 47 U.S.C. § 154(i).

Communications Commission, P.O. Box 358340, Pittsburgh, Pennsylvania 15251. Payment by overnight mail may be sent to Mellon Client Service Center, 500 Ross Street, Room 670, Pittsburgh, Pennsylvania 15262-0001, Attn: FCC Module Supervisor. Payment by wire transfer may be made to: ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6229. Include your NAL/Acct. No. with your wire transfer remittance.

6. **IT IS FURTHER ORDERED** that the above-captioned Commission investigation into the matters described herein is terminated.

FEDERAL COMMUNICATIONS COMMISSION

/s/ Kris A. Monteith

Kris A. Monteith
Chief, Enforcement Bureau

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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CONSENT DECREE

I. INTRODUCTION

1. The Enforcement Bureau ("Bureau") of the Federal Communications Commission (the "FCC" or "Commission") and T-Mobile USA, Inc. ("T-Mobile"),¹ by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau's investigation into possible noncompliance by T-Mobile with the requirements of Section 227 of the Communications Act of 1934, as amended (the "Act") and Section 64.1200(c) of the Commission's Rules.²

2. The Telephone Consumer Protection Act ("TCPA") was enacted in 1991 as section 227 of the Communications Act of 1934, as amended ("the Act"), to restrict certain telemarketing practices. The TCPA requires the Commission to adopt rules governing such practices, including the delivery of telephone solicitations to residential telephone lines.³ Consistent with this statutory mandate, the Commission first adopted rules to implement the TCPA in 1992, establishing a company-specific do-not-call regime whereby residential telephone consumers may make do-not-call requests to companies whose telephone solicitations they seek to end.⁴ Following considerable changes in the telemarketing industry,⁵

¹T-Mobile USA, Inc. is a nationwide wireless provider, and a subsidiary of Deutsche Telekom's T-Mobile International unit. Robert P. Dotson serves as President and Chief Executive Officer. T-Mobile USA, Inc.'s headquarters is located at: 12920 SE 38th Street, Bellevue, WA 98006.

² 47 U.S.C. § 227; 47 C.F.R. § 64.1200(c).

³Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394 (1991), *codified at* 47 U.S.C. § 227. The TCPA amended Title II of the Communications Act of 1934, 47 U.S.C. § 201 *et seq.* Section 227(c)(1) requires the Commission to conduct a rulemaking proceeding "concerning the need to protect residential telephone subscribers' privacy rights to avoid receiving telephone solicitations to which they object."

⁴*See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CC Docket No. 92-90, Report and Order, 7 FCC Rcd 8752 (1992) (*1992 TCPA Order*); *see also* 47 C.F.R. § 64.1200. Pursuant to petitions

and further statutory requirements,⁶ the FCC amended its TCPA rules in 2003.⁷ While retaining the company-specific do-not-call option to prevent telemarketing calls from particular entities, the amended rules, *inter alia*, expand this system to establish a National Do-Not-Call Registry that provides residential consumers with a one-step option to prohibit unwanted telephone solicitations.

II. BACKGROUND

3. T-Mobile is a nationwide wireless provider, and a subsidiary of Deutsche Telekom's T-Mobile International unit. T-Mobile holds numerous authorizations to provide telecommunications services from the FCC and state public utility commissions. T-Mobile contracts with independent dealers and retailers to sell T-Mobile products and services at over 30,000 points of distribution nationwide.⁸ As a matter of company policy, T-Mobile has made a business decision not to make outbound sales calls to anyone other than T-Mobile subscribers. T-Mobile represents that it has a strict policy against telemarketing by the independent dealers and sub-dealers in its authorized distribution network.⁹

4. In a letter of inquiry ("LOI") to T-Mobile dated January 14, 2004, the Bureau commenced an investigation concerning T-Mobile's telemarketing practices to residential consumers in connection with calls reportedly made on behalf of the company to consumers who had registered their telephone numbers on the National Do-Not-Call Registry.¹⁰ As part of its investigation of these

for reconsideration, the Commission adopted amendments to the TCPA rules in 1995 and 1997. *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CC Docket No. 92-90, Memorandum Opinion and Order, 10 FCC Rcd 12391 (1995) (*1995 TCPA Reconsideration Order*); *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CC Docket No. 92-90, Order on Further Reconsideration, 12 FCC Rcd 4609 (1997) (*1997 TCPA Reconsideration Order*).

⁵See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, 18 FCC Rcd 14014, 14021-22 (2003) (*2003 TCPA Order*) (describing expansion of telemarketing industry since 1992).

⁶Do-Not-Call Implementation Act, Pub. L. No. 108-10, 117 Stat. 557 (2003), *codified at* 15 U.S.C. § 6101 (*Do-Not-Call Act*). The Do-Not-Call Act, *inter alia*, directs the FCC to adopt rules that maximize consistency with those of the FTC. In 2003, the FTC had also amended its telemarketing rule, 16 C.F.R. Part 310, to include a National Do-Not-Call Registry.

⁷*2003 TCPA Order*, 18 FCC Rcd 14014.

⁸December 21 Response at 1.

⁹February 24 Response at 2.

¹⁰During the period from October 2003 through February 2005, this Commission and the FTC together received over 1000 complaints from consumers who allegedly received telephone solicitation calls from T-Mobile. See Letter from Kurt A. Schroeder, Deputy Chief, Telecommunications Consumers Division, Federal Communications Commission, to Robert Dotson, Chief Executive Officer, T-Mobile USA, Inc., dated January 14, 2004 (including 164 consumer complaints); Letter from Kurt A. Schroeder, Deputy Chief, Telecommunications Consumers Division, Federal Communications Commission, to Bob Calaff, Senior Corporate Counsel, Governmental and Industry Affairs, T-Mobile USA, Inc., dated June 10, 2004; Letter from Kurt A. Schroeder, Deputy Chief, Telecommunications Consumers Division, Federal Communications Commission, to Bob Calaff, Senior Corporate Counsel, Governmental and Industry Affairs, T-Mobile USA, Inc., dated September 21, 2004 (including 683 new consumer complaints); and Letter from Kurt A. Schroeder, Deputy Chief, Telecommunications Consumers Division, Federal Communications Commission, to Bob Calaff, Senior Corporate Counsel, Governmental and Industry Affairs, T-Mobile USA, Inc., dated February 22, 2005 (including 217 new consumer complaints).

complaints, the Enforcement Bureau staff sent three additional LOIs to T-Mobile requesting information, two of which also included more complaints filed by consumers who claimed to have received calls from T-Mobile despite having placed their telephone numbers on the National Do-Not-Call Registry.¹¹ During the course of the Investigation, T-Mobile provided written responses to the LOIs.¹²

III. DEFINITIONS

6. For purposes of this Consent Decree, the following definitions shall apply:
- a. “Act” means the Communications Act of 1934, as amended.
 - b. “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
 - c. “Commission” means the Federal Communications Commission.
 - d. “Effective date” means the date on which the Bureau releases the Adopting Order.
 - e. “Investigation” means the investigation and any related proceedings commenced by the Bureau’s Letter of Inquiry, January 14, 2004, to T-Mobile regarding possible noncompliance by T-Mobile with the requirements contained in Section 227 of the Act and Section 64.1200(c) of the Commission’s Rules during the period of October 1, 2003, through February 2005, which possible noncompliance with Section 227 and Section 64.1200(c) shall include, for purposes of this Consent Decree, all complaints

¹¹ See note 11, *supra*.

¹² Letter from David Charles, Corporate Counsel, T-Mobile USA, Inc., to Kurt A. Schroeder, Deputy Chief, Telecommunications Consumers Division, Federal Communications Commission, dated February 24, 2004; Letter from David Charles, Corporate Counsel, T-Mobile USA, Inc., to Kurt A. Schroeder, Deputy Chief, Telecommunications Consumers Division, Federal Communications Commission, dated March 1, 2004; Letter from Thomas J. Sugrue, Vice President, Government Affairs, T-Mobile USA, Inc., to Kurt A. Schroeder, Deputy Chief, Telecommunications Consumers Division, Federal Communications Commission, dated July 14, 2004; Letter from Thomas J. Sugrue, Vice-President, Government Affairs, T-Mobile USA, Inc., to Kurt A. Schroeder, Deputy Chief, Telecommunications Consumers Division, Federal Communications Commission, dated December 21, 2004; and Letter from Robert A. Calaff, Senior Corporate Counsel, Governmental and Industry Affairs, T-Mobile USA, Inc., to Kurt A. Schroeder, Deputy Chief, Telecommunications Consumers Division, Federal Communications Commission dated May 6, 2005. A tolling agreement was signed on December 14, 2004, and most recently modified on November 21, 2005. Under 47 U.S.C. § 503(b)(6), a Notice of Apparent Liability (“NAL”) for violations of the Communications Act and/or the Commission’s Rules by a non-broadcast licensee must be issued within one year from the date on which the alleged violation(s) occurred. Under the most recent modification of the tolling agreement, T-Mobile and the Commission agreed that any limitation period that would have expired in the time period commencing with the date of the initial tolling agreement, which was executed on December 14, 2004, would be tolled until the earlier of: (a) the date on which the FCC releases a NAL regarding any of the alleged violations described hereafter in this paragraph; (b) the date on which the FCC informs T-Mobile in writing that it has terminated the investigation; or (c) November 23, 2005. By tolling the statute of limitations as stated in the agreement, T-Mobile waived any right that it might otherwise have had to rely on the Tolloed Period in connection with the computation of the one-year period under 47 U.S.C. § 503(b)(6) as it applies to the alleged violations described in the agreement, and acknowledged that, upon execution of the Agreement, it has the same force and effect as any other order of the Commission.

that were or could have been made against T-Mobile for telemarketing calls made during the same period.

- f. “Order” or “Adopting Order” means an Order of the Bureau adopting the terms and conditions of this Consent Decree without change, addition, or modification, and formally terminating the above-captioned Investigation.
- g. “Parties” means T-Mobile and the Bureau.
- h. “T-Mobile” means T-Mobile USA, Inc. and any telecommunications carrier subsidiary, successor, or telecommunications carrier controlled by T-Mobile USA, Inc.
- i. “Telemarketing” means the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person.¹³
- j. “Telephone solicitation” means the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person, but such term does not include a call or message:
 - i. To any person with that person’s prior express invitation or permission;¹⁴
 - ii. To any person with whom the caller has an established business relationship¹⁵; or
 - iii. By or on behalf of a tax-exempt nonprofit organization.¹⁶
- k. “National Indirect Channel” means T-Mobile’s eleven (11) largest indirect dealers (National Indirect Dealers) who oversee or operate through sub-dealers’ points of distribution selling T-Mobile products and services.
- l. “Master Dealer” means an independent dealer who is authorized to sell T-Mobile service by contracting with third-party sub-dealers, and who in fact contracts with such sub-dealers to sell T-Mobile service.

¹³ 47 U.S.C § 227(a)(3); *see also* 47 C.F.R. § 64.1200(f)(7).

¹⁴Section 64.1200(c)(2)(ii) of our rules requires that prior express invitation or permission “must be evidenced by a signed, written agreement between the consumer and seller which states that the consumer agrees to be contacted by this seller and includes the telephone number to which the calls may be placed.” 47 C.F.R. § 64.1200(c)(2)(ii).

¹⁵For do-not-call purposes, the term “established business relationship” means “a prior or existing relationship formed by a voluntary two-way communication between a person or entity and a residential subscriber with or without an exchange of consideration, on the basis of the subscriber’s purchase or transaction with the entity within the eighteen (18) months immediately preceding the date of the telephone call or on the basis of the subscriber’s inquiry or application regarding products or services offered by the entity within the three months immediately preceding the date of the call, which relationship has not been previously terminated by either party.” 47 C.F.R. § 64.1200(f)(3).

¹⁶47 U.S.C § 227(a)(3); *see also* 47 C.F.R. § 64.1200(f)(9).

IV. AGREEMENT

7. T-Mobile agrees that the Bureau has jurisdiction over it and the subject matter contained in this Consent Decree and the authority to enter into and adopt this Consent Decree.

8. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement of the Investigation between T-Mobile and the Bureau. In express reliance on the covenants and representations contained herein, the Bureau agrees to terminate the Investigation. In consideration for the termination of this Investigation and in accordance with the terms of this Consent Decree, T-Mobile agrees to the terms, conditions and procedures contained herein.

9. The Parties agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance by T-Mobile with the requirements of the Act or the Commission's rules or orders. The Parties agree that this Consent Decree is for settlement purposes only and that by agreeing to this Consent Decree, T-Mobile does not admit or deny any noncompliance, violation, or liability associated with or arising from its actions or omissions involving the Act or the Commission's rules that are the subject of this Consent Decree.

10. In consideration for the termination of the Investigation in accordance with the terms of this Consent Decree, T-Mobile agrees to voluntarily implement a Compliance Program consisting of the components delineated below.

- a. T-Mobile will develop and implement a certification process for its National Indirect Dealers and sub-dealers in its National Indirect Channel. T-Mobile will require the principal(s) of its National Indirect Dealers and of each of their sub-dealers to certify on an annual basis that they acknowledge, understand and abide by all T-Mobile policies concerning telemarketing. Signatories will also certify that all sales managers and their supervisors have received copies of all T-Mobile's policies concerning telemarketing within five (5) business days of the certification and have been trained with respect to T-Mobile's policies.
- b. T-Mobile will continue to monitor all out-of-market activations by Master Dealers and sub-dealers, and will promptly investigate any unusual patterns in those activations that suggest unauthorized telemarketing may be occurring.
- c. T-Mobile hereby agrees that:
 - i. Its Master Dealers can be, and in the circumstances below will be, held liable if their sub-dealers engage in unauthorized telemarketing, and provisions specifically identifying this policy will be included in any new contract with a Master Dealer and in renewals of existing contracts with Master Dealers.
 - ii. If a preponderance of the evidence demonstrates that a T-Mobile sub-dealer has engaged in unauthorized telemarketing, T-Mobile will

- impose liquidated damages on the master dealer under the terms of T-Mobile's contract with the Master Dealer, and will impose other remedies, up to and including termination, as warranted by the evidence underlying the violation.
- iii. If a preponderance of the evidence demonstrates that a sub-dealer has engaged in unauthorized telemarketing, T-Mobile will terminate the sub-dealer under the terms of T-Mobile's contract with the Master Dealer and the underlying sub-dealer.
 - d. T-Mobile will amend its Program Rules to require all National Indirect Dealers and all Master Dealers with more than fifteen (15) sub-dealers to develop and implement a "no-telemarketing" (of T-Mobile service) campaign, designed to increase awareness of and compliance with T-Mobile's anti-telemarketing policies, T-Mobile's contractual remedies for unauthorized telemarketing (up to and including termination), and the other consequences of violations, including reputational harm among consumers and any penalties authorized by state or federal law. T-Mobile will also continue to include its no-telemarketing policies as part of the sales training offered to Master Dealers and Sub-Dealers.
 - e. T-Mobile will continue its existing communications program on its prohibition against telemarketing, by distributing regular information or "flashes" on the subject to all of its Master Dealers and sub-dealers.
 - f. T-Mobile will formally establish an internal process to promptly investigate and resolve inquiries and informal complaints alleging unauthorized telemarketing, as follows:
 - (1) All written complaints forwarded by a government agency will be investigated by or under the supervision of T-Mobile's Legal Department.
 - (2) All written complaints that T-Mobile receives directly from consumers will be screened by T-Mobile's Customer Care staff in order to determine whether they have resulted from skip-tracing or other collections activity. If skip-tracing¹⁷ or other collections activity is indicated, Customer Care will resolve the problem without delay. Such complaints that do not appear to involve skip-tracing or other collections activity will be forwarded to the T-Mobile Legal Department for further investigation.
 - (3) In all cases where practicable, investigation will be completed within 30 days of T-Mobile's receipt of the complaint.

¹⁷ "Skip-tracing" is a computerized technique utilized by T-Mobile to update contact information for consumers with delinquent accounts. A computer algorithm is used along with existing contact information for a consumer to search for alternative addresses and phone numbers that are reasonably likely to be the same person.

- (4) Investigation results for written complaints forwarded by a government agency, to the extent those are requested, will be included in a response to the agency at the close of the investigation (typically within 30 days from receipt of complaint).
- g. T-Mobile will ensure that at least one member of T-Mobile's team is specifically trained and responsible for handling telemarketing complaints as those matters arise, including up to one hundred percent of this person's time as warranted. Should one person be unable to handle such complaints promptly, T-Mobile will add additional responsible staff as necessary.
- h. T-Mobile will institute enhancements to its sales activation systems. These enhancements would include (1) randomizing credit review pass codes; (2) automatic expiration of credit review pass codes after no more than 90 days; and (3) lock-out mechanisms that will deny access after five or fewer unsuccessful attempts to access the credit review system.
- i. T-Mobile will reach out to consumers for help in detecting and preventing telemarketing, as follows:
- (1) T-Mobile will include information on its web site about its policy against telemarketing, including information on how to report telemarketing complaints.
 - (2) As part of its periodic consumer surveys, T-Mobile will include a question regarding whether respondents learned about T-Mobile via telephone. If telemarketing is detected, T-Mobile will follow up and take prompt enforcement action against any dealer or sub-dealer against whom there is sufficient evidence of involvement.
- j. Not later than 30 days after the Effective Date, T-Mobile will adopt newly revised written policies and procedures regarding its "No-Telemarketing" Compliance Program. T-Mobile's written policies and procedures, which will be memorialized in a No-Telemarketing Compliance Manual, will include the requirements above.
- k. Not later than 60 days after the Effective Date, and every 180 days thereafter, T-Mobile will submit a written report to the Bureau of its compliance with this Consent Decree, including in the first report, its progress in implementing its Compliance Program.
- l. T-Mobile will maintain and make available to the Bureau, within 14 days of receipt of any specific request from the Bureau, business records documenting its compliance with the terms and provisions of this Consent Decree.

- m. Should T-Mobile change its no-telemarketing policy and commence a telemarketing campaign, T-Mobile will notify the Bureau in writing within 30 days of the campaign's commencement.

11. T-Mobile agrees to make a voluntary contribution to the United States Treasury, without further protest or recourse to a trial *de novo*, in the amount of \$100,000 within ten (10) business days after the Effective Date of the Adopting Order. The payment must be made by check or money order and mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 358340, Pittsburgh, Pennsylvania 15251. Payment by overnight mail may be sent to Mellon Client Service Center, 500 Ross Street, Room 670, Pittsburgh, Pennsylvania 15262-0001, Attn: FCC Module Supervisor. Payment by wire transfer may be made to: ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6229. Include your NAL/Acct. No. with your wire transfer remittance.

12. The Bureau agrees that it will not use the facts developed in this Investigation through the Effective Date, the preventive measures undertaken by T-Mobile as a result of this Investigation, or the existence of this Consent Decree to initiate, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against T-Mobile, including any other enforcement action, nor will the Bureau seek any administrative or other penalties from T-Mobile concerning the matters that were the subject of the Investigation. In addition, if T-Mobile implements, with due care, each of the steps listed above in paragraphs 10(a) to 10(m) with the purpose of effectively preventing telephone solicitations in violation of the TCPA and FCC rules, the FCC will not take enforcement action against T-Mobile for violations of the Commission's Do-Not-Call Rules resulting from actions by T-Mobile employees or agents not specifically authorized to engage in telemarketing, unless: (1) T-Mobile either had actual knowledge or should have had actual knowledge, based on all the facts and circumstances presented in any such future cases, that the specific employee/agent was engaging in telemarketing; and (2) T-Mobile failed to take reasonable and practicable steps, including, but not limited to, the steps detailed in paragraph 10(c) above, to make the agent cease and desist telemarketing once T-Mobile had obtained specific evidence that the specific employee/agent was engaging in telemarketing. For purposes of this paragraph, the facts of which T-Mobile has or should have actual knowledge are those that are actually known (or should be actually known) by a T-Mobile employee.

13. The Bureau also agrees that it will not use the facts developed in the Investigation through the Effective Date or the existence of this Consent Decree to initiate, on its own motion, any proceeding, formal or informal, with respect to T-Mobile's basic qualifications to be a Commission licensee. Further, nothing in this Consent Decree limits the Commission's authority to consider and adjudicate any complaint that may be filed pursuant to Section 208 of the Act, 47 U.S.C. § 208, and to take any action in response to such complaint.

14. The Bureau also agrees to advise T-Mobile, as promptly as possible, of any large volume of complaints filed with the FCC alleging violations of the TCPA and FCC Do-Not-Call Rules. The parties agree that the decision to so advise T-Mobile shall be within the sole discretion of the Bureau and that any lack of such notification shall not affect the Commission's or Bureau's ability to investigate, or take enforcement action regarding, T-Mobile.

15. T-Mobile's decision to enter into this Consent Decree is expressly contingent upon the Bureau's issuance of an Order that is consistent with this Consent Decree, and which adopts the Consent Decree without change, addition or modification.

16. Provided the Bureau issues an Order adopting the Consent Decree without change, addition or modification, T-Mobile waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Order adopting this Consent Decree.

17. In the event that this Consent Decree is rendered invalid by a court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

18. By this Consent Decree, T-Mobile neither waives nor alters its right to assert and seek protection from disclosure of any privileged or otherwise confidential and protected documents and information, or to seek appropriate safeguards of confidentiality for any competitively sensitive or proprietary information.

19. T-Mobile agrees that any violation of the Order or of this Consent Decree shall constitute a separate violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order.

20. The Parties agree that if any provision of this Consent Decree conflicts with any subsequent rule or order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which T-Mobile does not consent), that provision will be superceded by such Commission rule or order.

21. The Parties agree that the requirements of this Consent Decree shall expire thirty-six (36) months from the Effective Date.

22. This Consent Decree may be signed in counterparts.

For: T-Mobile USA, Inc.

November 23, 2005 /s/ Thomas J. Sugrue
Date Thomas J. Sugrue
Vice President, Government Affairs

For: Enforcement Bureau
Federal Communications Commission

November 23, 2005 /s/ Kris A. Monteith
Date Kris A. Monteith
Chief, Enforcement Bureau